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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 6

[FAC 2005-83; FAR Case 2014-020; Item IV; Docket No. 2014-0020; Sequence No. 1]

RIN 9000-AM86

**Federal Acquisition Regulation; Clarification on
Justification for Urgent Noncompetitive Awards Exceeding One
Year**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to clarify that a determination of exceptional circumstances is needed when a noncompetitive contract awarded on the basis of unusual and compelling urgency exceeds 1 year, either at time of award or due to post-award modifications.

DATES: Effective: **[Insert date 30 days after publication in the FEDERAL REGISTER].**

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202-208-4949 for clarification of

content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-83, FAR Case 2014-020.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the Federal Register at 79 FR 78378 on December 30, 2014. The rule was in response to a Government Accountability Office (GAO) report, GAO-14-304, Federal Contracting: Noncompetitive Contracts Based on Urgency Need Additional Oversight, dated March 2014. The proposed rule language at FAR 6.302-2(d) has been revised to further clarify it. One respondent submitted a comment on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comment in the development of the final rule. The comment resulted in no changes to the final rule. A discussion of the comment is provided in the following paragraph.

Comment: The respondent stated that there should be no justification for extending any contract that is noncompetitive for more than one year.

Response: The extension of non-competitive contracts is allowable. The purpose of this case is to ensure that when the extension has been deemed to be warranted, that the proper justification and documentation are prepared and included in the contract file.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

The purpose of this rule is to clarify that a determination of exceptional circumstances is needed when the period of performance, inclusive of options and modifications, of a noncompetitive contract awarded on the basis of unusual and compelling urgency is greater than one year. This rule only impacts the internal procedures of the Federal Government.

There are no recordkeeping, reporting, or other compliance requirements associated with the rule. The rule does not duplicate, overlap, or conflict with any other Federal rules.

No issues were raised by the public comments in response to the initial regulatory flexibility analysis.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subject in CFR Part 6

Government procurement.

Dated: June 18, 2015.

William Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 6 as set forth below:

PART 6—COMPETITION REQUIREMENTS

1. The authority citation for 48 CFR part 6 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

2. Amend section 6.302-2 by—

a. Removing from paragraph (d)(1) “contract awarded” and adding “contract awarded or modified” in its place;

b. Revising paragraph (d)(1)(ii);

c. Redesignating paragraphs (d)(2) through (d)(4) as paragraphs (d)(3) through (d)(5), respectively;

d. Adding a new paragraph (d)(2); and

e. Revising the newly designated paragraph (d)(3).

The revisions and addition read as follows:

6.302-2 Unusual and compelling urgency.

* * * * *

(d) * * *

(1) * * *

(ii) May not exceed one year, including all options, unless the head of the agency determines that

exceptional circumstances apply. This determination must be documented in the contract file.

(2) (i) Any subsequent modification using this authority, which will extend the period of performance beyond one year under this same authority, requires a separate determination. This determination is only required if the cumulative period of performance using this authority exceeds one year. This requirement does not apply to the exercise of options previously addressed in the determination required at (d) (1) (ii) of this section.

(ii) The determination shall be approved at the same level as the level to which the agency head authority in (d) (1) (ii) of this section is delegated.

(3) The requirements in paragraphs (d) (1) and (d) (2) of this section shall apply to any contract in an amount greater than the simplified acquisition threshold.

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[BILLING CODE 6820-EP]

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